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**(2016) 03 KAR CK 0183**  
**In the Karnataka High Court**  
**Case No : R.S.A. Nos. 862 and 863/2007**

Yedihalli Kalakawara Durugappa

APPELLANT

Vs

Kodabalu Sudha and Others

RESPONDENT

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**Date of Decision :** 11-03-2016

**Acts Referred:**

Specific Relief Act, 1963 — Section 20  
Transfer of Property Act, 1882 — Section 53A

**Citation :** (2016) 03 KAR CK 0183

**Hon'ble Judges :** A.V. Chandrashekara, J.

**Bench :** Single Bench

**Advocate :** R. Gopal, Advocate, for the Appellant; Jagadish D. Hiremath, Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

A.V. Chandrashekara, J.—1. These appeals have arisen out of the judgment and decree passed in O.S. Nos. 230/97 and 234/97 and R.A. Nos. 40/06 and 41/06 which were pending on the file of Civil Judge (Senior Divn.), Harihar.

2. The appellant-Y.K. Durgappa was the 1st defendant in O.S.230/97, a suit filed for the relief of declaration of title and permanent injunction by Smt. Kodabalu Sudha and her children representing her deceased husband-Andanappa. The said suit came to be filed for the above reliefs in respect of land measuring 14.20 acres in Ananthahalli village of Harappanahalli Taluk. Plaintiffs therein had averred that the property in question belonged to Andanappa and after his death, they are in lawful possession and they had to file the suit against the defendants since they were interfering with their lawful title and possession.

3. The 1st defendant-Y.K. Durgappa resisted the suit by filing written statement with the specific averment that Andanappa-deceased husband of Kodabalu Sudha chose to execute an agreement of sale in his favour agreeing to sell the entire extent of 14.20 acres in Ananthahalli village for a sum of Rs. 48,000/- out of which she had received Rs. 46,500/- as advance. It is also averred that the

entire extent of land was handed over to him on 28.4.1988, the day on which the agreement of sale was executed. With these pleadings, he had requested the court to dismiss the suit.

4. On the basis of the pleadings of the parties, the trial court framed the following issues:

"1. Whether the plaintiff proves that they are in continuous possession of the suit schedule property after the death of Andanappa?

2. Whether the plaintiff proves that the defendants are unnecessarily interfering their possession?

3. Whether the defendants proves that they have been put in possession of the suit schedule property by the deceased Anandappa through an agreement of sale deed dated 28.4.88?

4. Whether the plaintiffs proves that they are entitled for the relief of declaration of title and permanent injunction?

5. To what order or decree?"

5. Durgappa (defendant in O.S.230/97) chose to file a suit for to the relief of specific performance of the contract based on the agreement of sale dated 28.4.1988 stated to have been executed in his favour by deceased Andananppa (husband of Smt. Kodabalu Sudha), which was numbered as O.S.234/97. The said suit was filed after issuing notice calling upon Smt. K. Sudha and her children to execute a regular sale deed pursuant to the agreement of sale dated 28.4.1988. The suit was contested by Smt. Sudha and her children denying all the plaint averments, and they had called upon the plaintiff therein to prove the alleged sale agreement, handing over possession of the schedule property in favour of Durgappa, receipt of Rs. 46,500/- as advance out of the total consideration of Rs. 48,000/-. They had requested the court to dismiss the suit.

6. On the basis of the above pleadings, the trial court framed the following issues:

"1. Whether the plaintiff proves that the deceased Andanappa has executed the suit agreement dated 28.4.1988?

2. Whether the plaintiff proves that the deceased Andanappa had agreed to sell the suit schedule property for a total consideration of Rs. 48,000/- and received the sum of Rs. 46,500/"- on the date of agreement and agreed to receive the balance of sale consideration on the date of sale deed?

3. Whether the plaintiff further proves that the deceased Andanappa has put the plaintiff into possession of the suit schedule property?

4. Whether the defendant proves that the plaintiff is not entitled for the relief of specific performance for the reasons stated in para 11 of the written statement?

5. Whether the plaintiff proves that he is always ready and willing to perform his

part of agreement?

6. Whether the plaintiff proves that the present defendants 1 to 4 are liable to execute the sale deed?

7. To what relief the parties are entitled?

8. To what order or decree?"

Both the suits were clubbed and common evidence was adduced in O.S.234/97. Y.K. Durgappa is examined as PW1 and on his behalf, 4 witnesses have been examined and 24 exhibits are got marked. Smt. Kodabalu Sudha is examined as DW-1 and 4 witnesses are examined on her behalf. In all 48 exhibits are got marked. Ultimately the suit filed by Y.K. Durgappa was dismissed and the suit filed by Smt. Sudha and her children came to be decreed by common judgment and decree dated 21.7.2006.

7. The said judgment and decree passed by the Civil Judge (Junior Divn.), Harappanahalli, was challenged before the Civil Judge (Senior Divn.), Harihar, by filing R.A. Nos. 40/06 and 41/06 respectively. The first appellate court has held that deceased-Andanappa had executed an agreement of sale vide Ex. P14 in favour of Durgappa, but has rejected the prayer for specific performance on the ground of delay and laches. It is held that Smt. Sudha and her children are in possession of the schedule property. The finding in regard to the execution of the sale deed is upheld by the first appellate court and thus it has become final.

8. Both these second appeals have been admitted to consider the following substantial questions of law framed on 31.7.2008:

"1) Whether in the facts and circumstances of the case, the courts below were justified in denying the relief of specific performance having held that the execution of the sale agreement dated 28.4.1988 vide Ex. P14 is proved and consideration is passed?

2) Whether in the facts and circumstances of the case, the courts below were justified in granting injunction in favour of the defendants 1 to 4 in O.S.234/97 holding that they are in possession of the suit schedule property ignoring the contents of Exs.P-14, P-19, P-23 and P-24 and the oral evidence of PW2-2 to 5?"

#### REASONS

9. During the pendency of these appeals, the appellant has filed an application under Order LXI Rule 27, C.P.C. supported by a sworn affidavit requesting the court to permit him to produce additional evidence. Some documents are produced to buttress the fact that he is in possession and that the finding given by the trial court is incorrect and improper.

10. Smt. Sudha and her children have also filed an application under Order LXI Rule 27, C.P.C. along with documents requesting this court to permit them to lead additional evidence to support their contention that they are in possession

of the entire extent of land measuring 14.20 acres in Survey No. 40.

11. In the light of filing of two applications as stated above, learned counsel on both sides were asked as to whether it would be proper to send back the matter to the first appellate court to record additional evidence only in regard to the factum of possession and the applicability of the discretion available under Section 20 of the Specific Relief Act in favour of the defendants to the facts of the case.

12. Both the learned counsel have no objection to the limited extent as mentioned above. It is to be seen that a specific finding of possession is absolutely required in a case like this when execution of the agreement of sale is upheld. If for any reason the first appellate court were to hold that possession was handed over to Durgappa under the strength of the agreement of sale, then he would be entitled for protection in terms of Section 53A of the Transfer of Property Act. Therefore, the question of possession will have to be kept open to be decided afresh after recording evidence.

13. Apart from this the point to be considered is whether the discretionary relief could be granted under section 20 of Specific Relief Act to a defendant in a suit for specific performance when no basis is found to that effect in the written statement and when the factum of execution of agreement of sale has become final.

14. Accordingly the appeals will have to be allowed. Neither the trial court nor the first appellate court have given any specific finding as to how the provisions of Section 20 of the Specific Relief Act would be applicable to the defendant without there being any pleading to that effecting the written statement in the suit filed for specific performance. Therefore, that question will have to be kept open.

15. In the result, the following order is passed:

"ORDER

I) Both the appeals are allowed. The judgments passed by the first appellate court are set aside, confirming the finding on the execution of agreement of sale marked as Ex. P14. It is made clear that the question of applicability of the discretion vested in the court under Section 20 of the Specific Relief Act is kept open to be urged in the light of no specific defence being taken by the defendant in the suit filed specific performance of the contract, and thereafter to decide whether he, i.e. Y.K. Durgappa (appellant in both these appeals) is entitled for the relief of specific performance. Additional evidence is recorded in regard to the factum of possession and a fresh finding be given regarding the possession.

II) Parties to appear before the first appellate court on 18.4.2016 at 11.00 a.m. without awaiting notice. This court to send both the applications filed under Order LXI Rule 27, C.P.C. by the appellants and respondents to the first appellate court along with the documents for recording additional evidence. Both the

regular appeals shall be disposed of as early as possible and at any rate within six months from 18.4.2016.

III) Office to send all the lower court records along with the applications to the court of Civil Judge (Senior Divn.), Harihar, at the earliest."